SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1973

Nos. 73-686

TELEPHONE USERS ASSOCIATION, INC., *Petitioner*,

v.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
and
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, *Respondents*.

Petition For A Writ Of Certiorari To The District Of Columbia Court Of Appeals

January
1974

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I N D E X

	Page
THE OPINION	3
JURISDICTION	3
QUESTIONS PRESENTED FOR REVIEW	4
STATUTES AND LAWS INVOLVED	5
STATEMENT OF THE CASE	6
ARGUMENT: REASONS FOR GRANTING WRIT	11
A. IMPORTANCE OF THE CASE:	
Consumer rights given by Congress, The U.S.Court of Appeals, D.C., and this Court have been destroyed.	
B. THERE IS ARBITRARY AND CAPRICIOUS ACTION BY A FEDERALLY CREATED COURT.....	15
CONCLUSIONS	17

TABLE OF AUTHORITIES

	Page
Bebchick v . P.U.C.,115 U.S. App. D.C. 232, 318 F 2d 203,4 (1961)	14
Sierra Club v Morton, 405 U.S. 727, 31 L Ed 2d 637,642 (1972)	4,9,12 13,20
Telephone Users Assn,Inc v C and P Tel. Co. and P.S.C.(D.C.)304 A2d293 =(1973)	2,3
Tel. Users Assn Inc v PSC 42 U.S. L.W. 3193 (U.S.Sup. Ct. Oct.9, 1973)	6
Tel. Users Assn,Inc. v FCC, 126 U.S. App. D.C. 178, 375 F 2d 923 (1967)	6
U.S. v Public Service Commsn.,151 F2d 609	13,20
Williams V WMATC, 134 U.S. App. D.C. 232, 318 342, 419 F 2d 922(1968)	14
Winston v Zoning Board of Appeals, 407 Ill.588,95 N.E. 2d 864,8(1950)	9
STATUTES :	
District of Columbia Code 1973 Title 43 # 705	3,4,7,9,13, 14,19,20
RULES OF PRACTICE OF PSC	
Rule 7.1 and 7.4(Standing)	4

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v.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

and

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY,
Respondents.

On Petition for Writ of Certiorari to the District of Columbia Court of Appeals

Petitioner, The Telephone Users Association, Inc., a non-profit consumer group chartered in the District of Columbia in 1963, prays that a writ of certiorari issue reviewing the Orders of the District of Columbia Court of Appeals entered in subject case on April 6th 1973 and April 25th 1973.

OPINION BELOW

The decision of the District of Columbia Court of Appeals is reported at 304 A. 2d 293(1973), and is found in the Appendix. This decision is known as Order No. 6819, dated April 6,1973. The Petition for Rehearing under Rule 40, which was denied April 25,1973, is also appended. Both the decision and orders of April 6th and April 25th are here for review.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. # 1257(3). The judgment sought to be reviewed consists of the Orders described above, dated April 6th and April 25th, 1973. The jurisdiction of the District of Columbia Court of Appeals over the Public Service Commission, where this case arose, rests upon 43 -705 of the D.C. Code .

QUESTIONS PRESENTED

The only question presented is, Whether this court should review an order of a federally created court which has stricken down consumer rights created by congress, by a sister federal appellate court, and by this very court in a number of cases including Sierra Club v. Morton, 405 U.S. 727 and the cases cited therein.

STATUTES AND LAWS INVOLVED

43 D.C. Code 705:

"Any public utility or any other person affected by any final order or decision of the Commission..may..file with the Clerk of the District of Columbia Court of Appeals a petition of appeal setting forth the reasons for the appeal and the relief sought:..."

"Any such appeal shall be heard upon the record before the Commission, and no new or additional evidence shall be received by the said court. The said court ,or judge or judges thereof, before whom any such appeal shall be heard, may require and direct the Commission to receive additional evidence upon any subject related to the issues...upon which the record may contain no substantial evidence."

RULES OF PRACTICE AND PROCEDURE BEFORE THE PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA IN EFFECT JANUARY 1,1970

RULE 7.1 Petition. Any person not named as a party in a proceeding but having a substantial interest therein may petition the Commission for leave to intervene. The petition shall state the petitioner's interest....

Rule 7.4 Status of Intervenor. A person whose petition for leave to intervene has been granted...shall be permitted to appear and participate as a party....

STATEMENT OF THE CASE

Petitioner is a non-profit consumer group, chartered 1963 in D.C.. It has been party in every telephone rate case since then locally,[1] and is a party in the current long distance case. Respondent C. and P. is a wholly owned subsidiary of A.T. and T., and vends telephone service to offices, homes, and through hundreds of coin box phones in the area. Public Service Commission is the D.C. regulatory body which hears cases about rates and services.[2] Formal Case No. 570 is the current case in which P.S.C. gave to C and P. about $17,000,000 additional for each year, and is here on appeal by petitioner; (but it is not the case currently before the PSC in which C. and P. is asking over $20. million more).

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1. See cases in table of cases, supra, showing name of petitioner as a party.

2. Usually one man hears the case; two later vote, sometimes three. No jury is present.

Congress created consumer rights in enacting 43 D.C. Code Section 705 which provided standing to sue by any.."person affected by any final order or decision of the Commission." See fuller text,P.__.

In compliance with this congressional grant, on September 13,1971, petitioner filed a Petition for leave to intervene in Case No. 570, stating to the Public Service Commission:

1."That it is itself a telephone user and will be affected by any order as to local rates.

2." That it represents others similarly situated..who have specifically given petitioner authority to so represent them, and these persons will all be affected by any order as to rates..." [3]

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3. The underlining has been added to emphasize that petitioner complied with 43-705 D.C.Code.

Petition for leave to intervene was granted over objection of C and P. after which petitioner examined witnesses, made requests for information, filed briefs, and eventually took an appeal following denial of the petition for reconsideration.

In its brief before the D.C. Court of Appeals, petitioner argued: (p.1)

"The Appellant, for itself and others similarly situated, who are affected by recent Orders of the Public Service Commission, D.C., which increased the rates for telephone service within the District of Columbia, appeal from the said Orders and bring their case to this Court."[3]

After hearing the arguments on the legal points of appeal, the court below refused to rule on the validity of any of those points, but instead granted the

3. Underlining added to show exact compliance with 43-705 D.C.Code.

motion of the giant telephone utility to throw the consumers out of the case on the ground that petitioner had failed to claim that it paid its own bill. The court below, Kern, J., said:

> "We have no doubt that one who alleges that he uses and pays for telephone service would be affected by any order increasing phone rates. See Telephone Users Association v F.C.C. 126 U.S. App. D.C. 178, 375 F.2d 923(1967). However, this record does not contain any allegation or evidence that TUA as contrasted with its attorney, is itself paying for the telephone it uses or otherwise has a "direct stake" in the outcome" of the proceeding. Sierra Club v Morton, 405 U.S. 727(1972) [3]. See Winston v Zoning Board of Appeals, 407 Ill. 588, 95 N.E. 2d 864, 868-69(1950). Accordingly, we are precluded from reviewing TUA's appeal and its petition must be dismissed."

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3. The Supreme Court there said(p.740): "The requirement that a party seeking review must allege facts showing that he is himself adversely affected...does serve at least as a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome".....

At the time of these events, petitioner listed itself in the phone book but had its bill sent to its attorney under his name; petitioner had its billing changed to itself upon issuance of the appealed from opinion, and moved for reconsideration, which was denied. Petitioner moved before PSC to amend to add that it paid its own bills, when the case was remanded, which was denied. On remanding, PSC added about $4 million to the earlier grant of $13. million. Petitioner presumes that this Certiorari covers both proceedings.

It is worth noting that at the remand, at which millions additional were given, persons represented by petitioner were not represented by counsel of their own choosing.

ARGUMENT: REASONS FOR GRANTING THE WRIT

A) IMPORTANCE OF THE CASE.

The rights of a consumer group to be heard in a court of law to oppose the claims of a giant utility for more of the consumers' dollars, are not only a vital issue of this day, but have been recognized and underlined by act of congress, by decisions of lower courts, and by the opinions of this court. Where, as here, an intermediate tribunal moves to deprive a consumer group of those rights when the consumer group has complied to the letter with an act of congress and the language of the highest intermediate court of appeals as well as the intent of this court, thus setting aside an act of congress as to the right of consumers to appear in a case and the acts of a sister federal appellate tribunal, this court

is well within its rights and its customs in stepping into the case on a petition for certiorari, and exercising supervision in the interest of law, justice, and the rights of consumers confronted by giant utilities.

It is of national importance that where congress states what consumers must allege in order to have standing, that consumers who allege as directed do in fact have the standing granted by congress. It is thus of national importance that this court hear the case since the court below overrode the standard set by congress and threw the case out as far as consumers were concerned because the consumers followed the dictate of the statute instead of the language of an unrelated case (Sierra Club) even though the intent of Sierra favored the consumers. This is because there must be some certainty

in the law or else lawyers could not begin to practice it.

More specifically, this court should hear this case because congress said in 43-705 D.C. Code that any person who was affected by a final order of the PSC could appeal to the D.C. Court of Appeals. In United States versus Public Utilities Commission, the U.S. Court of Appeals for the District of Columbia held at 151 F2d 609 that " the term person affected, as used in Utility Law authorizing any public utility or any other person or corporation affected by a final order or decision of Public Utilities Commission of the District of Columbia to appeal"..... "includes a consumer of a public utilities company." Sierra Club v Morton, 405 U.S. 727 (1972) indicats that a party must " allege facts showing that he is himself adversely affected", and thus supports the

logic of 43-705 while changing the wording hardly at all. Bebchick v. Public Utilities Commission, 115 U.S. App. D.C. 232-3,318 F 2d 203,4 and Williams v WMATC 134 U.S. App. D.C. 342, 415 F 2d 922 are cases where standing to sue rested upon dropping a coin into a coin box of a bus.

In throwing the petition out of court because it"failed to allege"positively that"petitioner paid its own telephone" bill, the D.C. Court of Appeals was in fact changing the language in the statute which every party must comply with in order to obtain standing on appeal; it was also overriding the U.S. Court of Appeals; and it was misconstruing the intent of this court in Sierra. Moreover, the D.C. Court of Appeals was ignoring the common sense obvious fact that every person and organization is affected by any order as to rates for telephones.

B. Failure to grant the Motion for Reconsideration below was arbitrary and capricious when petitioner immediately brought itself into incontestible compliance.

Prior to the ruling below, petitioner was listed in the phone book but the bill was sent to its counsel. Petitioner had the bill immediately sent to itself under its own name, and filed the Motion for Reconsideration. No change was made in the use, which continued to be use by the petitioner of the services of the utility, for payment of said services. In other words, the utility was still selling the service to the petitioner but was billing the petitioner now instead of its counsel.

While the present telephone rate case was going on, the telephone company began another case, asking for still more money, known as Formal Case No. 595. The Order of

the Public Service Commission No.5592 noted that, " We would note that in a recent Petition filed by TUA to intervene in Case No. 570, TUA did allege that it was paying its own telephone bill.."(p.4). Petitioner requests that this Court note that the case before it is No.570. If there ever was any basis factually for the holding below, it was immediately cured and to throw out the consumers and require them to pay $13,000,000 additionally each year without answering their points on appeal raises more legal questions than it is the function of this Petition to answer. [4].

4. See Exhibit, copy of telephone bill of Petitioner, in its name, marked paid.

CONCLUSION

This court should review this case because the meaning of an act of congress is involved, because the District of Columbia Court of Appeals has misconstrued that Act, because the District of Columbia Court of Appeals has set itself up in direct conflict with the United States Court of Appeals for the District of Columbia, because the District of Columbia Court of Appeals has misapplied this court's doctrine as set forth in Sierra and other consumer cases on standing to sue.

Where a consumer complies with the set requirements of a statute and court rulings, if a question of compliance genuinely arises, the consumer should be permitted to amend rather than throw that consumer out.Refusal by the D.C. Court of Appeals to grant that leave to amend raises the question, Why Not?

Consumers of the products of giant utilities like the phone company have some rights, too. One of these is the right to challenge rate increases as being unlawful and unreasonable. A consumer who is invited by the utility to put his dime in the coin box of a telephone, needs say no more than that he uses the product of the utility in order to have standing to sue. The telephone company , after all, sells its product, it does not hand it out, free, to its customers, the consumers.Before a court could hold that a user had no standing, it would be necessary that the phone company prove first that it gave its product away to that consumer or that he stole it. This case contains no such evidence.It does contain evidence, however, that petitioner uses the telephone service and will be affected by rate increases.

The court below made much of the event of sending the appellant's bill to its counsel prior to its opinion. Section 43-705 gives appellate standing, however, to anyone affected by a final order of PSC. That another pays one's bill does not of itself mean that one is not affected by an order; another might stop paying that bill as happened in this case; one might use pay phones as happened in this case; the Exhibit shows that the bills are in fact in Petitioner's own name, not its lawyer. A non-profit association must live on gifts, one of which might be the payment of a phone bill by a donor, or on loans, one of which might be loan of funds to pay its bill and underwrite its credit. The basis of the court's logic is erroneous.

But more important than whether the court below is in error is the fact that it has misconstrued 43-705, an act of congress, so as to weaken consumer rights, has overruled the United States Court of Appeals, D.C. in U.S. v Public Service Commission, D.C. as to standing to sue, and has misapplied and misconstrued Sierra and other cases in which this court has set up consumer rights.[5] Review by this court is not only legally imperative but is something that the court would do in any case of this type because of the constitutional position of the Supreme Court of the United States.

Respectfully,

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5."A palpable economic injury has long been recognized as sufficient to lay the basis for standing to sue,"Sierra, 31 L Ed 2d 637, 642.

Appendix p 1

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 6819

TELEPHONE USERS ASSOCIATION, PETITIONER,

v.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA, RESPONDENT.

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, INTERVENOR.

No. 6846

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, PETITIONER,

v.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA, RESPONDENT.

Petitions of Appeal from an Order of the Public Service Commission of the District of Columbia

(Argued January 24, 1973 Decided April 6, 1973)

Arthur S. Curtis for petitioner in No. 6819.

C. Belden White, II and *Linus H. Deeny*, Assistant Corporation Counsel, with whom *C. Francis Murphy*, Corporation Counsel, was on the brief, for respondent.

Robert A. Levetown, with whom *Alfred W. Whittaker* and *John P. Barnes* were on the brief, for the petitioner in No. 6846 and the intervenor in No. 6819.

Before Fickling, Kern and Yeagley, Associate Judges.

KERN, *Associate Judge*: Telephone Users Association, Inc. (TUA) and the Chesapeake and Potomac Telephone Company (C&P) each filed a petition of appeal from an order entered by the Public Service Commission of the District of Columbia (Commission) authorizing C&P to increase the rates it charged for telephone service rendered within the District of Columbia. We consolidated these appeals for argument and decision.

In essence, TUA contends that there were certain deficiencies in the Commission's proceedings serious enough to invalidate its order and that this order was not supported by the evidence. C&P argues in its appeal that the Commission erroneously determined the dollar amounts of C&P's (a) investment and (b) operating expenses with the result that the increase in telephone rates authorized by the Commission is insufficient to afford the company a reasonable opportunity to earn a fair rate of return on its investment.

I.

We may entertain TUA's appeal and consider its contentions under the applicable statute [1] only if it is a "per-

[1] D.C. Code 1972 Supp., § 43-705 provides in pertinent part:

> The District of Columbia Court of Appeals shall have jurisdiction to hear and determine any appeal from an order or decision of the Commission. Any public utility or any other person or corporation *affected by any final order* or decision of the Commission . . . may . . . file with the . . . Court of Appeals a petition of appeal . . . . (Emphasis added.)

son or corporation affected by" the Commission's order in this case. *See United States v. Public Utilities Commission*, 80 U.S.App.D.C. 227, 151 F.2d 609 (1945). Since the business of courts is to decide concrete controversies rather than render advisory opinions, one who seeks judicial review of agency action must show the impact of such action on himself. *See* Davis, *Standing: Taxpayers and Others*, 35 U. CHI. L. REV. 601, 617 (1968). ("[T]he federal courts have consistently adhered to one major proposition without exception: One who has no interest of his own at stake always lacks standing.") In the instant case, TUA's petition of appeal to this court neither alleges nor recites facts to show that *it* will be directly affected by the Commission's order. *See Interstate Electric v. Federal Power Commission*, 164 F.2d 485, 486 (9th Cir. 1947).

The record of the proceedings before the Commission contains a petition by TUA for leave to intervene alleging that it (1) is a District of Columbia non-profit association, (2) is "itself a telephone user and will be affected by any order as to local rates" and (3) "represents others similarly situated."

The administrative record also contains an answer by C&P to TUA's intervention,

(1) alleging that, according to its records (a) TUA does *not* itself subscribe to telephone service, and (b) TUA's attorney in this proceeding has subscribed for and is billed for that telephone number under which TUA is listed in the telephone directory;

(2) citing a comment by the Federal Communications Commission in a Bell System rate case that "[I]t appears that the association [TUA] is, for all intents and purposes, the alter ego of its attorney," 31 Fed. Reg. 9888 (1966), and,

(3) pointing to a statement by TUA's attorney on the record to the Commission during a prior telephone rate case (Formal Case No. 538, June 7, 1971) that, "We [TUA] don't function on a membership basis." (Tr. at 3725.)

We note that despite the Commission's Rule 5.3(e) requiring that "every petition . . . *shall* contain . . . . [v]erification and signature of *petitioner* . . . and the signature and address of the attorney," [emphasis added], only TUA's attorney signed TUA's petition to intervene.[2]

We note also that the Commission denied TUA leave to intervene in a 1965 telephone rate case (Formal Case No. 506, Order No. 4938, June 4, 1965) and commented in a 1969 rate case that "there is almost no information in the record" about TUA. (Formal Case No. 538, Order No. 5460, Mar. 19, 1971.) We find ourselves in much the same predicament because (1) TUA presented no testimony or exhibits in this case and (2) the Commission's order (Formal Case No. 570, Order No. 5483, Nov. 27, 1971, p. 3) granting TUA leave to intervene contains no explanation for its decision except to refer to TUA as "a telephone user."

We have no doubt that one who alleges that he uses *and pays for* telephone service would be affected by any order increasing telephone rates. *See Telephone Users Association v. FCC*, 126 U.S.App.D.C. 178, 375 F.2d 923

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[2] The FCC in its Memorandum Opinion and Order in Docket No. 16258 denying TUA intervention commented:

> *Nothing . . . is contained . . .* [in TUA's petition to intervene] *with respect to* the nature of the association, the number or character of its membership or *its officers. Neither* of the pleadings *gives any address for the association other than that of counsel who signed the pleadings.* [31 Fed. Reg. 9888 (1968).]

(1967). However, this record does *not* contain any allegation or evidence that TUA, as contrasted with its attorney, is itself *paying* for the telephone it uses or otherwise has a "direct stake in the outcome" of this proceeding. *Sierra Club v. Morton*, 405 U.S. 727 (1972).[3] *See Winston v. Zoning Board of Appeals*, 407 Ill. 588, 95 N.E.2d 864, 868-69 (1950). We conclude that TUA has failed to show it will be "affected by" the Commission's order to a legally cognizable extent. Accordingly, we are precluded from reviewing TUA's appeal and its petition must be dismissed.

II.

In considering C&P's appeal we are obliged to keep in mind that Congress has vested rate-making authority in the Commission and that the scope of our review of its final rate orders is limited.[4] The United States Court of Appeals for this Circuit, formerly vested with jurisdiction over Public Service Commission orders, described what it deemed to be the proper scope of judicial review:

> Our role as a reviewing court is not to make an independent determination as to whether fares fixed by the Commission are just and reasonable, but rather to insure that the Commission, in ex-

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[3] The Supreme Court there said (at 740):

> The requirement that a party seeking review *must allege* facts showing that he is himself adversely affected . . . . does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome . . . . (Emphasis added.)

[4] D.C. Code 1967, § 43-706 provides in pertinent part:

> [T]he review by the court shall be limited to questions of law . . . and the findings of fact by the Commission shall be conclusive unless it shall appear that such findings . . . are unreasonable, arbitrary, or capricious.

> ercising its rate-making power, has acted rationally and lawfully. Our function is normally exhausted when we have determined that the Commission has respected procedural requirements, has made findings based on substantial evidence, and has applied the correct legal standards to its substantive deliberations. . . . [*Williams v. Washington Metropolitan Area Transit Commission*, 134 U.S.App.D.C. 342, 362, 415 F.2d 922, 942-43 (1968), *cert. denied*, 393 U.S. 1081 (1969).] (Footnote omitted.)

The Supreme Court has recently summarized the responsibilities of a reviewing court:

> *First*, it must determine whether the Commission's order, viewed in light of the relevant facts and of the Commission's broad regulatory duties, abused or exceeded its authority. *Second*, the court must examine the manner in which the Commission has employed the methods of regulation which it has itself selected, and must decide whether each of the order's essential elements is supported by substantial evidence. *Third*, the court must determine whether the order may reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable. . . . (Emphasis added.) [*Permian Basin Area Rate Cases*, 390 U.S. 747, 791-92 (1968), *aff'd in part and rev'd in part sub nom. Skelly Oil Co. v. Federal Power Commission*, 375 F.2d 6 (10th Cir. 1967).

Basically, C&P claims that the Commission's order is confiscatory because the rates it is now authorized to charge for services rendered are still insufficient to afford

it even a reasonable opportunity to earn the return on its investment which the Commission approved. *See Re PEPCO*, 83 P.U.R.3d 113, 127 (D.C. PSC 1970).[5] We now describe briefly the Commission's rate-making calculation in this case so as to place C&P's argument in perspective.

Rate-making for a particular utility is in essence making a forecast of its future financial status upon the basis of its known performance during a span of time in the immediate past, *viz.*, a "test period". *Re C&P Co.*, 57 P.U.R.3d 1, 26 (1964). *Michigan Wisconsin Pipe Line Co. v. Federal Power Commission*, 263 F.2d 553, 555-56 (6th Cir. 1959). Using 1971 as the test year, the Commission first determined C&P's weighted average rate base[6] to be about 224 million dollars and a fair and reasonable rate of return on such investment to be 8½%.[7] It then multiplied the rate base of 224 million dollars by the 8½% rate of return to obtain C&P's revenue requirement,[8] which amounts to about 19 million dollars. Since

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[5] C&P argued that it needed a rate increase sufficient to produce an *additional* 22½ million dollars of revenue, but the Commission concluded that a rate increase yielding only some 13 million dollars *additional* revenue was justified. (Formal Case No. 570, Order No. 5518, July 6, 1972, at 2, 23.)

[6] Rate base is defined as the value of a company's property used and useful in the public service minus accrued depreciation. C. PHILLIPS, ECONOMICS OF REGULATION 216 (1969). This Commission uses original cost accounting. *Re PEPCO*, 64 P.U.R.3d 364, 374 (D.C. PSC 1966).

[7] *See Williams v. WMATC*, *supra* at 348, 415 F.2d at 928 for a discussion of rate of return.

[8] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944). This is the amount the Commission determines to be the total revenue required by C&P "to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital."

the revenue requirement is the result of the rate base times the rate of return, its determination will be dependent upon the value of each of these two components.

The Commission also determined C&P's *net* revenue for the 1971 test year to be about 13 million dollars. The Commission then found that C&P's actual net revenue fell 6 million dollars short of the 19 million dollar revenue requirement it had previously determined to be a fair and reasonable return on C&P's investment. Therefore, the Commission authorized C&P to make up this difference, adjusted for certain tax factors, by increasing the rates it charged its customers. (Formal Case No. 570, Order No. 5518, July 6, 1972, at 20-23.)

It may be seen that the Commission's determination as to the rates C&P may charge its customers to meet its revenue requirement is directly affected by the Commission's findings of the amount of (1) C&P's rate base and (2) C&P's *net* revenues, the latter derived by subtracting appropriate expenses from total revenues. Our Circuit Court said in *Mississippi River Fuel Corp. v. Federal Power Commission*, 82 U.S.App.D.C. 208, 226, 163 F.2d 433, 451 (1947), "[A] court can review the fairness, reasonableness, and non-confiscatory character of a rate only by reviewing the propriety of the *elements* of which the rate was composed." (Emphasis added.) Since the findings of the Commission with respect to rate base and net revenues directly influence the ultimate determination of the rates C&P may charge, these subsidiary findings are subject to our review. II F. Cooper, State Administrative Law 735, 738 (1965).

In rate-making, ordinarily, the utility's average rate base for the test period is used, but an exception to this general rule of utility regulation is recognized by the

Commission [9] and other public service agencies [10] when a condition known as "attrition" is found to exist. Attrition "describe[s] the tendency of the rate of return to diminish in a period of comparatively high construction costs. . . . As the high cost plant comes into service, it tends to increase the applicable rate base [investment] at a *more rapid pace* than the resultant earnings [net operating revenues], and the rate of return decreases accordingly." (Emphasis added.) *New England Telephone & Telegraph Co. v. Department of Public Utilities*, 121 N.E.2d 896, 906 (Mass. 1954).[11] When "attrition" occurs then the rate-maker may use a company's *year-end* rate base instead of weighted *average* rate base to compensate for the attrition. *City of Lynchburg v. Chesapeake and Potomac Telephone Co. of Virginia*, 200 Va. 706, 711, 107 S.E.2d 462, 469 (1959). C&P's 1971 *weighted average* rate base was *less* than its end-of-year base (Dec. 31, 1971). Claiming that attrition existed, C&P sought to have its year-end rather than its weighted average rate base used in determining its revenue requirement. As shown above,

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[9] *Re C&P*, 57 P.U.R.3d 1, 26 (D.C. PSC 1964); *Re PEPCO*, 28 P.U.R.3d 206, 217-18 (D.C. PSC 1959); *Re PEPCO*, 8 P.U.R.3d 76, 89-90 (D.C. PSC 1955).

[10] *E.g., Re Southern Bell Tel. & Tel. Co.*, 93 P.U.R.3d 76, 86 (S.C. PSC 1971).

[11] For additional definitions of attrition, *see City of Lynchburg v. Chesapeake & Potomac Telephone Co. of Virginia*, 200 Va. 706, 107 S.E.2d 462 (1959); *Re PEPCO*, 64 P.U.R.3d 364, 381 (D.C. PSC 1966); PHILLIPS, ECONOMICS OF REGULATION, *supra* at 243-44 cites this hypothetical: "Suppose a commission sets a company's rate base at $10 million and allows a 6 percent rate of return, resulting in annual earnings of $600,000. If, however, the company completes construction of a $1 million new plant and puts it into operation during the new year, and if total earnings increase to $627,000, the rate of return will be 5.70 percent."

given a certain rate of return, the larger the rate base of the utility the greater will be its revenue requirement.[12]

C&P submitted the following data during the Commission proceeding to prove attrition.

The rate of return it *actually* realized on its investment had on the whole *decreased*:

	Intrastate Rate of Return on Net Investment
1966	6.96%
1967	6.85%
1968	6.33%
1969	7.06%
1970	6.62%
1971	6.79%
1972 (forecast)	5.03%

The ratio of its operating expenses to total revenues had generally *increased*:

	Intrastate Operating Ratio
1966	68.39%
1967	68.70%
1968	69.05%
1969	68.52%
1970	71.48%
1971	70.63%
1972 (forecast)	77.69%

and,

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[12] Revenue requirement equals rate of return times rate base.

The revenue generated by its operation compared to its investment had *declined*:

	Intrastate Operating *Revenue Per $100 of Intrastate Net Investment*
1966	$47.21
1967	$45.33
1968	$44.94
1969	$46.00
1970	$43.96
1971	$44.57
1972 (forecast)	$41.70

The Commission, without *specifically* stating whether or not attrition existed, refused to use end-of-year rate base instead of weighted average rate base. It explained in its order denying C&P's application for reconsideration (at 6-7):

> [O]ur holding was only that these two, or even all three of these tests, taken by themselves and in the absence of other and supporting considerations, are not necessarily conclusive as to the existence of attrition. . . .
>
> . . . .
>
> . . . [W]e . . . found that these data, *properly viewed*, did not provide the requisite specific evidence to demonstrate the need for the attrition adjustment. . . . (Emphasis added.)

It is necessary to turn back to the Commission's original order[13] in this rate case to learn how this data is

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[13] The Commission's order is reported in 95 P.U.R.3d 339 (D.C. PSC 1972). Its order denying applications for reconsideration is reported in 96 P.U.R.3d 378 (D.C. PSC 1972).

"properly viewed" by the Commission. The Commission stated therein (at 8):

> [T]he data for the 1966-1969 period . . . are irrelevant . . . since whatever attrition occurred during that period was recognized and allowed for in our decision in the Company's last rate case. . . .

However, we note that the order in the Company's last rate case [14] reveals that the Commission did *not* expressly recognize that attrition existed in C&P's operations. Rather, the Commission in that rate case apparently granted C&P relief because of the long lapse of time between the initiation of and the final decision in C&P's rate case.[15] In addition, we are of opinion that the Commission erred in the present case in refusing to consider C&P's evidence for the years 1966 through 1969 since attrition is a condition which can only be exemplified by

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[14] Formal Case No. 538 (Order No. 5465, June 7, 1971).

[15] The Commission said:

> If our determination between year-end and average rate base were to depend on these factors alone [the three indicia of attrition], we would be presented with a difficult decision.
>
> However, there is an additional factor which we feel must be recognized in this proceeding, *i.e.*, the factor of regulatory lag . . . . By the time these proceedings are completed and an order is issued, the better part of two years will have elapsed since the end of the test period. During those two years, the inflationary trend has continued unabated. Realistic rate-making should take into account this time lag. Its existence, coupled with the evidence of attrition discussed above, amply justifies the use of year-end rate base in determining future revenue requirements. [Formal Case No. 538, Order No. 5460, Mar. 29, 1971, at 36.] [Excerpt from the Proposed Findings, Opinion and Order, incorporated into the final order with certain changes not here pertinent.]

showing a *trend* over a series of years, and this is what C&P was seeking to show by this data.

The Commission with respect to the data submitted by C&P for 1972 in support of its claim of attrition states in its order (p. 8):

> Also included in the seven-year data submitted by the Company are figures reflecting a Company forecast with respect to 1972 operations. However, we are unable to give these figures the weight urged by the Company with regard to the attrition problem *in light of the purpose for which they were prepared and the doubts and questions raised with respect to them on cross-examination.* (Emphasis added.)

The Commission in its order denying rehearing explained further its rejection of the 1972 figures (p. 8):

> Our rejection of the 1972 forecast here was based on the doubts and questions raised on the record with respect thereto . . . . The acceptability of forecasts continues, as in the past, to depend on the *pertinent circumstances as disclosed by the record.* (Emphasis added.)

We are unable to determine from these orders what in fact were the "doubts and questions raised" about C&P's 1972 forecast and what were the "pertinent circumstances" which caused the Commission to reject C&P's 1972 figures. It is the responsibility of the Commission to present its decisions in a manner amenable to judicial review and in view of the present state of the record we can only speculate as to the evidence upon which the Commission was relying.[16] We note, however, evidence

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[16] *Permian Basin Area Rate Cases, supra* at 792; *Colorado Wyoming Gas Co. v. Federal Power Comm'n*, 324 U.S. 626,

in the record that (1) C&P's forecasts in the past had proved accurate,[17] (2) Commission auditors are permanently assigned to C&P's premises and continuously audit C&P's books which are maintained in accordance with a Commission-prescribed accounting system,[18] and (3) C&P's expert testified that the 1972 "forecast was developed in the ordinary course of business as part of our normal budgetary process."[19] Given these circumstances we are of opinion that the Commission has erred in refusing to consider C&P's 1972 forecast.[20]

The Commission, having refused to give any considera-

634-35 (1945); *SEC v. Chenery Corp.*, 318 U.S. 80, 94-95 (1943); *The Citizens Assoc. of Georgetown, Inc. v. Zoning Comm'n of the District of Columbia*, —— F.2d —— (D.C. Cir., Nos. 72-2103, 72-2174, Feb. 6, 1973, slip op. at 8-9); *Brooks v. The Atomic Energy Comm'n*, —— F.2d —— (D.C. Cir., No. 72-2177, Mar. 8, 1973, slip op. at 6); *The Municipal Distribs. Group v. Federal Power Comm'n*, 467 F.2d 741, 748 (D.C. Cir. 1972); *Sun Oil Co. v. Federal Power Comm'n*, 144 U.S.App.D.C. 288, 295, 445 F.2d 764, 768 (1971); *WAIT Radio v. FCC*, 135 U.S.App.D.C. 317, 320, 418 F.2d 1153, 1156 (1969); *D.C. Transit System, Inc. v. WMATC*, 121 U.S.App.D.C. 375, 401, 350 F.2d 753, 779 (1965).

[17] Tr. at 627 (cross-examination of Mr. Kagen, Chief Accountant of the Commission); C&P Exhibit No. 3C at 6 (Rebuttal).

[18] Staff Exhibit 8 at 2 (Testimony of Mr. Kagen).

[19] C&P Exhibit No. 3C at 3.

[20] Some courts have suggested, without expressly holding, that a commission should consider post-test-period data. *See West Ohio Gas Co. v. Pub. Util. Comm'n* [No. 2], 294 U.S. 79 (1935); *Lindheimer v. Ill. Bell Tel. Co.*, 292 U.S. 151 (1934); *New York Tel. Co. v. Pub. Serv. Comm'n*, 29 N.Y.2d 164, 272 N.E.2d 554 (Ct. App. 1971); *Boston Gas Co. v. Dept. of Pub. Util.*, 269 N.E.2d 248 (Mass. 1971); *New England Tel. & Tel. Co. v. Dept. of Pub. Util.*, *supra*.

tion to C&P's data for 1966 to 1969 and for the year 1972, stated (at 9):

> This leaves us the data for the three-year period 1969-71, which the Company submitted as part of its direct case and which the Company also claims demonstrates the presence of attrition. . . . [T]*here is a reversal in 1970-1971 of the "trend"* allegedly reflected in the 1969-1970 data under each of the three tests. (Emphasis added.)

However, the Commission itself had recognized in C&P's last rate case that C&P's financial position in 1971 was significantly improved not because its investment was able to generate more revenues than in prior years but solely as the result of action taken by the Federal Communications Commission in changing over costs from intrastate to interstate telephone operations.[21] Thus, the Commission had recognized in Formal Case No. 538, Order No. 5460 (March 29, 1971), pp. 58-59:[22]

> [S]ignificant changes . . . occurred while these proceedings were in progress. First, and by far most important, the Ozark Plan of separations . . . provided very substantial benefits to the District of Columbia ratepayers . . . it . . . shifted more than $5,000,000 from the intrastate to the interstate side of the Company's revenue requirements. *Percentage wise, this was by far the greatest benefit which any jurisdiction in the*

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[21] Prescription of Procedures for Separating and Allocating Plant Investment, Operating Expenses, Taxes and Reserves Between the Intrastate & Interstate Operations of Telephone Companies, 26 F.C.C.2d 247 (1970).

[22] Order No. 5460 was actually the proposed, rather than the final Findings, Opinion and Order. However, the final version, issued June 7, 1971, did not differ from the proposed in any respects herein pertinent.

> *county received from the Ozark Plan.* . . . (Emphasis added.)

We hold that the Commission's conclusions (1) *not* to consider C&P's data for the years 1966 to 1969 and for the year 1972 and (2) that the data for 1970 and 1971, *considered alone*, failed to show attrition, were arbitrary and without support in reason or the evidence. We are *not* today holding that C&P's evidence in the record requires a finding by the Commission of attrition, or that if the Commission finds attrition it would be *compelled* to use C&P's year-end rather than its weighted average rate base.[23] We do hold that the Commission has failed to make adequate findings based on evidence in the record respecting C&P's claim of attrition and for that reason this case must be remanded for further findings.[24] Judge Prettyman's comment, speaking for the District of Columbia Circuit Court in *Mississippi River Fuel Corp., supra* at 227, seems particularly apt:

> [T]he Commission, even though expert, is forbidden to be arbitrary. And the courts are directed to prevent it from being so. The Commission cannot . . . shield arbitrariness . . . by failure to state adequate reasons for its conclusions. This court, in the present case, has not reversed the conclusions of the Commission, except in the procedural sense necessary to a remand. It has re-

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[23] *New England Tel. & Tel. Co. v. Mass. Dept. of Pub. Util.*, 275 N.E.2d 493, 500-01, 92 P.U.R.3d 113, 119 (Mass. 1971). PHILLIPS, ECONOMICS OF REGULATION, *supra* at 243-44, 296. *But see* note 9 *supra* and cases cited therein.

[24] D.C. Code 1972 Supp., § 1-1509(e) provides *inter alia* that "findings of fact shall consist of a concise statement of the conclusions upon each contested issue . . . supported by and in accordance with the reliable, probative and substantial evidence. . . ."

> manded the case for clarification where clarity is not present, and for completion where incompleteness now exists. When the findings and conclusions are complete and clear, the court will then, if appropriate proceedings are brought, consider whether the ultimate rulings of the Commission are within the permissible bounds of its power. . . .

We turn now to the Commission's determination of the amount of C&P's expenses which undergirds its findings of C&P's net revenues. The Commission summed up the issue in its order (pp. 17-19):

> As part of its direct case, the Company sought the allowance of a net amount of $1,120,000 to give full annual effect to the certain wage adjustments which became effective at various times in 1971, *pursuant to the terms of the three-year settlement which it had recently negotiated with the Union.* On rebuttal, the Company sought, in addition, two further increases in employee expenses, one in the net amount of $105,000 to reflect a Group Hospitalization rate increase, effective *January 1, 1972,* and the other, in the net amount of $638,000 to reflect wage schedule and cost of living adjustments, which, *under the recent wage settlement,* are to be effective on July 1, 1972. . . .
>
> • • • •
>
> We are inclined to disallow the two 1972 adjustments proposed by the Company. These adjustments were first proposed as part of the Company's rebuttal case despite the fact that the Company was fully aware of these pending changes at the time it testified in its direct case, thereby *not affording the Staff or Intervenors the opportunity to present evidence of offsetting adjustments to expense or revenues without unduly prolonging the proceeding.* . . . (Emphasis added.)

The Commission's order denying C&P's application for rehearing states (pp. 8-9):

> Both the claim for the 1972 wage adjustments and the Company's 1972 forecast were first made a part of the record as part of the Company's rebuttal case. As a result, the Staff *was unable either to review fully the Company's forecast or present its own evidence of offsetting adjustments without unduly prolonging the proceedings.* . . . (Emphasis added.)

We are unpersuaded by the Commission's assertion of C&P's lack of diligence as justification for not considering these two items of 1972 "employee" expense in determining C&P's net revenues for rate-making purposes. The fact that there would be a wage increase in July 1972 was known to all parties before the hearing even began since this wage increase was the result of a three-year contract between C&P and the union. Only the amount of the wage increase was unknown. Moreover, C&P's counsel at the Commission's pre-hearing conference in October 1971, alerted all parties that C&P might seek allowance for these 1972 expenses when he stated (Tr. at 16):

> [A]lthough we have made no adjustments for 1972, as the Commission's last order [Formal Case No. 538, Order No. 5460, Mar. 29, 1971 at 113] did permit out-of-hearing adjustments . . . we are not waiving our '72 adjustments. We're simply deferring action on them.

We note also (Tr. at 615) that the Staff received in early February (two weeks before filing its own evidence)[25] C&P's forecast of its 1972 operations, containing that information about C&P's expenses and revenues which

[25] Formal Case No. 750, Order No. 5498, Feb. 7, 1972.

the Commission stated in its orders the Staff needed in order to be able to respond properly to C&P.

Finally, on March 3rd, C&P submitted to the Staff, as a part of its rebuttal testimony (Formal Case No. 570, Order No. 5483, Nov. 22, 1971, at 5), the exact adjustments it proposed and cross-examination of C&P's rebuttal witness was not had until March 14th. Since there was no recordation of the testimony taken on *that particular* day because of transcribing difficulties, the hearing for the purpose of cross-examining C&P's rebuttal witness (and an intervenor's witness) had to be held again on April 4th. (Letters of the Commission, dated March 20, and 22, 1972, Formal Case No. 570). Given these particular facts, we conclude the Commission erred in refusing to consider C&P's data in support of its claim for allowance of these additional expenses.

In sum, we are constrained to remand the record to the Commission with directions to consider and weigh *all* the evidence concerning attrition [26] and to make an express determination whether or not attrition exists. If the Commission finds that C&P has made a showing of attrition it must then determine whether the use of C&P's year-end rate base rather than its weighted average rate base would be appropriate. *See* note 23, *supra*.

Further, the Commission must consider C&P's contention that the January 1972 increase in its employees'

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[26] The Staff introduced evidence consisting of a table purporting to show that C&P's net revenues were in fact keeping pace with its investment over the years in question. [Staff Exhibit No. 8A, Schedule 16.] C&P challenged the Staff's formula as not being a valid indicator of whether or not attrition existed because it erroneously compared each subsequent year of the Company's performance to *one base* year.

Group Hospitalization premiums and the July 1972 increase in its employees' wages are adjustments that should be made in the 1971 test year data.[27]

We expect that the Commission's determinations will be explicit and supported by clear and comprehensive findings so that our further review can be facilitated. *Washington Gas Light Co. v. Baker*, 88 U.S.App.D.C. 115, 127, 188 F.2d 11, 23 (1950). *See* cases cited in note 16 *supra*.

In remanding the record we leave it to the Commission's informed judgment whether further hearings are appropriate. The Commission's order under review in this case granting rate increases to C&P shall remain in effect pending the further proceedings on remand.

The petition of appeal in No. 6819 is dismissed; the record on appeal in No. 6846 is remanded for further proceedings.

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[27] We note that the Commission in C&P's last rate case (Formal Case No. 538) adjusted the Company's test period expenses to reflect known future wage increases and did *not* deem it necessary to make offsetting adjustments to revenues. Order No. 5460, Mar. 29, 1971, at 13-14.

21

District of Columbia
Court of Appeals

FILED APR 6 1973

Alexander L. Stevas
Clerk

Nos. 6819 & 6846

JANUARY TERM, 1973

TELEPHONE USERS ASSOCIATION, Petitioner, No. 6819
v.
PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA, Respondent,
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, Intervenor.

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, Petitioner, No. 6846
v.
PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA, Respondent.

21

Petitions of Appeal from Orders of the Public Service Commission

BEFORE: Fickling, Kern and Yeagley, Associate Judges. (Continued)

(Continued)

O R D E R

These causes came on to be heard on the transcript of record from the Public Service Commission and the briefs of the parties, and were argued by counsel. On consideration whereof, it is

ORDERED for the reasons set forth in the opinion filed herein this date that case No. 6819 is dismissed, and it is

FURTHER ORDERED that the record on appeal in case No. 6846 is deemed remanded to the Commission for further proceedings in accordance with the opinion filed herein this date.

BY THE COURT:

JOHN W. KERN, III,
Associate Judge.

Dated: April 6, 1973.

Opinion per Associate Judge John W. Kern, III.

District of Columbia
Court of Appeals

FILED APR 25 1973

Clerk

No. 6819

JANUARY TERM, 19 73

TELEPHONE USERS ASSOCIATION,
Petitioner,

v.

PUBLIC SERVICE COMMISSION OF
THE DISTRICT OF COLUMBIA,
Respondent,

THE CHESAPEAKE & POTOMAC TELEPHONE COMPANY,
Intervenor.

BEFORE: Fickling, Kern and Yeagley, Associate Judges.

(Continued)

23

(continued from Appendix 1 p. 23)

O R D E R

On consideration of petitioner's "Petition of Telephone Users Association, Inc. Under Rule 40 for Rehearing: Further Petition Under the Equitable Powers of this Court to Correct its Own Errors in the Interest of Justice" and of petitioner's supplement thereto, and on consideration of the following motions filed herein on behalf of petitioner: "Motion of Telephone Users Association, Inc. for Leave to Amend Petition of Appeal and Brief", "Alternative Motion to Add or Substitute a Party as Petitioner in No. 6819, 6846", and "Motion to Stay Order and Remand Case Pending Ruling on Motion for Leave to Amend Petition or Motion for Leave to Amend Petition for Leave to Intervene, if Standing is Denied upon Papers Filed Simultaneously", it is

ORDERED that petitioner's aforesaid petition and motions are hereby denied.

PER CURIAM.

FILED
MAR 1 5 1972
Chief Clerk

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC SERVICE COMMISSION, D. C.
RECEIVED
SEP 13 1971

NOTED
SEP 14 1971
J.C.W.
CHAIRMAN

IN THE MATTER OF

COMPLAINT AND APPLICATION OF THE C AND P TELEPHONE COMPANY FOR INCREASED RATES

FORMAL CASE NO. 570

PETITION OF TELEPHONE USERS ASSOCIATION, INC. FOR LEAVE TO INTERVENE

COMES NOW THE TELEPHONE USERS ASSOCIATION, INC, A NON PROFIT ASSOCIATION CHARTERED IN THE DISTRICT OF COLUMBIA IN 1963, AND RESPECTFULLY REQUESTS LEAVE TO INTERVENE IN THESE PROCEEDINGS FOR ITSELF AND OTHERS SIMILARLY SITUATED, AND IN SUPPORT OF ITS REQUEST STATES:

25

1) THAT IT IS ITSELF A TELEPHONE USER AND WILL BE AFFECTED BY ANY ORDER AS TO LOCAL RATES;

(Continued, p 26)

2) THAT IT REPRESENTS OTHERS SIMILARLY SITUATED, INCLUDING NUMEROUS PERSONS WHO HAVE SPECIFICALLY GIVEN PETITIONER AUTHORITY TO SO REPRESENT IT, AND THESE PERSONS WILL ALL BE AFFECTED BY ANY ORDER AS TO RATES OR OTHERWISE IN THIS PROCEEDING;

3) THAT, ON BEHALF OF ITSELF AND OTHERS SIMILARY SITUATED, IT BELIEVES THAT THE REQUEST TO CHANGE THE ALLOWABLE RATE OF RETURN IS ILL FOUNDED AND SHOULD BE DENIED, AND PETITIONER WILL ENDEAVOR TO ASSIST THE COMMISSION IN ARRIVING AT A JUST DECIBION IN THIS MATTER;

4) PETITIONER HAS PARTICIPATED IN THE LAST TWO LOCAL RATE CASES, THE FIRST OF WHICH IS NOW BEFORE THE U.S. COURT OF APPEALS, D.C., AND THE LATEST ONE IS EN ROUTE TO THE D.C. COURT OF APPEALS; PETITIONER IS PRESENTLY A PARTY BEFORE THE FCC ON LONG DISTANCE RATES; PETITIONER INTENDS TO BE REPRESENTED BY COUNSEL WITH EXPERIENCE IN SUCH MATTERS;

5) PETITIONER WISHES TO MOVE THAT THE APPLICATION BE SUMMARILY DISMISSED SINCE IT IS CONTRARY TO PUBLIC POLICY; THE THEORY THAT HEARINGS CAN BE HELD NOW IS CONTRARY TO ESTABLISHED LEGAL POLICY, SINCE C AND P HAS JUST HAD A RATE CASE AND MUST WAIT SEVERAL YEARS BEFORE BEGINNING ANOTHER; AND, FIGURES PRESENTED NOW ARE UNTIMELY AND SPECULATIVE AS TO FUTURE DECISIONS.

RESPECTFULLY,
ASCurtis
ARTHUR S. CURTIS, COUNSEL FOR
TELEPHONE USERS ASSN. INC. 816

CERTIFICATE: I HAVE THIS 10TH DAY OF SEPTEMBER 1971 MAILED POSTAGE PREPAID

NOTED
SEP 13 1971
Chief Engineer

Q

26

(Note: Caption Omitted)

A SUPPLEMENT TO THE PETITION OF TELEPHONE USERS ASSOCIATION, INC FOR REHEARING UNDER RULE 40 OF THIS COURT

FACTS WHICH THIS COURT HAS MISAPPREHENDED OR OVERLOOKED

The Petition States:

"Comes now the Telephone Users Assn,Inc., a non-profit association chartered in the District of Columbia in 1963, and respectfully requests leave to intervene in these proceedings for itself and others similarly situated, and in support of its request states:

1) That it is itself a telephone user and will be affected by any change as to local rates...

2) That it represents others similarly situated...

POINTS OF LAW WHICH THIS COURT HAS OVERLOOKED

1. A palpable economic injury has long been recognized as sufficient to lay the basis for standing to sue. Sierra Club v Morton, 31 L Ed 637, 642.

2. The allegation by petitioner that it may be financially injured by the outcome of the proceeding is sufficient to give standing to sue. Sierra Club v Morton, 614, 615.

CONCLUSION TO SUPPLEMENT

The Court erred in its initial ruling and should correct that error, and hold that Petitioner has standing to sue as a party, and then go on to consider the points raised in the Petition of Appeal.

C&P Telephone

STATEMENT OF DEPOSIT OR ADVANCE PAYMENT DUE

SIMPLE INTEREST, AT THE RATE OF 6% PER ANNUM, WILL BE PAID ON A DEPOSIT FOR THE PERIOD HELD.

IF PAYMENT IS NOT RECEIVED BY _____ WE WILL ASSUME YOU NO LONGER DESIRE THE SERVICE AND WILL CANCEL THE APPLICATION.

Your Service Representative

Please return both copies with your payment

THIS STATEMENT WILL SERVE AS A RECEIPT WHEN STAMPED PAID BY THE TELEPHONE COMPANY AND RETURNED TO YOU.

BILLING NAME

Telephone Users Assn.

ADDRESS

Nat'l. Press Bldg.

Wash., D.C. 20004

Capitol Sec. & Mlg. List Service

AMOUNT	DEPOSIT	DEP
$100.00		X
DATE PAID	YEARS	MONTHS
4/16/73		41
AREA CODE	TEL. CAT. NUMBER	EXTENSION
202	628-5697	

MISCELLANEOUS

28

SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

October Term, 1973

Nos. 73-686
73-687

TELEPHONE USERS ASSOCIATION, INC., *Petitioner,*

v.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
and
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, *Respondents.*

On Petition For A Writ Of Certiorari To The District Of Columbia Court Of Appeals

BRIEF FOR THE PUBLIC SERVICE COMMISSION IN OPPOSITION

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IN THE

Supreme Court of the United States

October Term, 1973

Nos. 73-686
73-687

TELEPHONE USERS ASSOCIATION, INC., *Petitioner,*

v.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
and
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, *Respondents.*

On Petition For A Writ Of Certiorari To The District Of Columbia Court Of Appeals

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BRIEF FOR RESPONDENT PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA IN OPPOSITION

OPINIONS BELOW

The decision of the District of Columbia Court of Appeals presented in Docket No. 73-686 is reported at 304 A.2d 293 (1973). (Appendix to Petition in No. 73-686, pp. 1-20). The decision of the District of Columbia Court of Appeals presented in Docket No. 73-687 is unreported. (App. to Petition in No. 73-687).

QUESTION PRESENTED

The question presented is identical in both cases:

Was not the District of Columbia Court of Appeals correct in dismissing petitioner's appeals from orders of the Public Service Commission of the District of Columbia (PSC or Commission) on the ground that petitioner lacked standing where the record plainly showed that petitioner in both cases had failed to allege and prove that petitioner had paid telephone bills itself and therefore was not a person affected by the PSC orders appealed from?

STATEMENT OF THE CASES

Case No. 73-686 in this Court commenced before the PSC as Formal Case No. 570 with the filing by The Chesapeake and Potomac Telephone Company (C&P) of a petition for an increase in its rates. Petitioner was granted intervention and C&P's request, after full hearing, was in part granted by the Commission and such orders were then appealed by petitioner Telephone Users Association, Inc. (TUA) and became Case No. 6819 in the District of Columbia Court of Appeals (DCCA), which appeal was dismissed on the ground that TUA had no standing to appeal within the purview of Sec. 43-705, D.C. Code, 1973, because TUA failed to show it will be "affected by" the PSC's order to a legally cognizable extent. Petition to this Court followed.

Case No. 73-687 in this Court had its genesis before the PSC as Formal Case No. 585 in a C&P petition to immediately raise C&P's rates to compensate C&P for the Congress' increasing of the District of Columbia gross receipts tax on Public Utilities from 4% to 5%. Petitioner was granted intervention on the same grounds as in Formal Case No. 570, but in neither case in its petition to intervene did TUA allege or offer to produce evidence that it was then paying for the alleged use of a telephone. C&P's request, after full hearing, was granted, and the PSC orders were appealed and became case No. 7126 in the

DCCA, which Court subsequently granted C&P's motion to dismiss TUA's appeal on the ground that petitioner had no standing to appeal. TUA then petitioned this Court.

It should be noted that the fact that the PSC grants a petition to intervene in no way can be taken to mean, as TUA alleges, that the PSC has found that TUA would be affected by any final PSC order. Rule 7.4 of the PSC Rules of Practice and Procedure specifically contradicts such a conclusion in the following language:

> Rule 7.4 . . . However, the granting of such a petition [of intervention] shall not constitute a determination by the Commission that the intervenor is or will be affected by its final order or decision.

It is to be noted that TUA alleges that the order of the Court below in DCCA No. 7126 was invalid because the DCCA failed to make findings of fact as required by Sec. 43-705, D.C. Code, 1973. This observation is completely without merit because the DCCA had just written a lengthy decision in TUA's companion case DCCA No. 6819 in which its findings on which dismissal was granted were fully set forth—and since the basis for TUA's intervention in PSC Formal Case No. 585 was, by its own request, based upon the facts alleged in its petition to intervene in PSC Formal Case No. 570, a repetition in DCCA No. 7126 of the found facts in DCCA No. 6819 would be superfluous.

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioner Has Failed To Present Any Question Warranting The Exercise Of This Court's Discretionary Jurisdiction To Review On Writ Of Certiorari

Contrary to the command of subparagraph (h) of paragraph 1 of the Court's Rule 23, neither petition for a writ of certiorari contains "[a] direct and concise argument

amplifying the reasons relied on for the allowance of the writ". Petitioner nowhere indicates which, if any, of the "special and important reasons" set forth in Rule 19 it believes justify the granting of the petitions.

In its "Reasons for Granting the Writ" on page 8, TUA cites *Sierra Club* v. *Morton,* 405 U.S. 727, and *Bebchick* v. *Public Utilities Commission,* 115 U.S. App. D.C. 232-3, 318 F.2d 203, 4, and *Williams* v. *WMATC,* 134 U.S. App. D.C. 342, 415 F.2d 922, ostensibly for the reason that these cases conflict with the DCCA decisions in the cases on appeal and therefore could possibly be said to come within the ambit of this Court's Rule 19(b).

TUA argues that the Sierra Club case has been somehow bypassed by the DCCA in its dismissal of its appeals. Counsel for PSC are at a loss to see how this conclusion could be reached. The DCCA action is directly in point with Sierra's results. This Court in that case specifically held that unless a petitioner alleges and demonstrates "injury in fact" he lacks standing to judicially challenge an administrative agency's action. It is true that Sierra was concerned with the Federal Administrative Procedure Act and the instant cases concern interpretation of Sec. 43-705, D.C. Code, 1973, but the results should be identical. In the DCCA No. 6819 opinion[1] the Court at pages 4 and 5 of the slip opinion specifically stated:

> We have no doubt that one who alleges that he uses *and pays for* telephone service would be affected by any order increasing telephone rates (citation omitted). However, this record does *not* contain any allegation or evidence that TUA, as contrasted with its attorney, is itself *paying* for the telephone it uses or otherwise has a "direct stake in the outcome" of this proceeding. *Sierra Club* v. *Morton,* 405 U.S. 727 (1972). See *Winston*

[1] 304 A2d 293 (1973)

> v. *Zoning Board of Appeals*, 407 Ill. 588, 95 N.E. 2d 864, 868-69 (1950). We conclude that TUA has failed to show it will be "affected by" the Commission's order to a legally cognizable extent. Accordingly, we are precluded from reviewing TUA's appeal and its petition must be dismissed. [Footnotes omitted]

This reasoning is on all fours with Sierra.

With regard to the Bebchick and Williams cases, TUA seeks to show a conflict with the DCCA decisions in the instant cases, but it must be pointed out that fare payment in the coin box in the transit cases was assumed by the Court in that no one questioned it. In DCCA No. 6819, after decision by the Court, TUA alleged for the first time that TUA also uses public phones and pays in the coin box. Let this be assumed to be correct for sake of argument. These assumed facts do not change the results in the instant cases because the rate orders appealed from include *no change whatever* in the public phone rate, and therefore TUA cannot be affected by that rate so as to bring itself within the ambit of Sec. 43-705, D.C. Code, 1973.

The record in the appealed cases does not disclose any ground for review conceivably falling within the standards and consideration governing review on writ of certiorari prescribed by Rule 19 of this Court. These cases involve nothing more than the finding by the DCCA, that TUA, as a matter of fact and based on the record, does not have standing to appeal because it is not a person affected by the appealed PSC orders, as is required by Sec. 43-705, D.C. Code, 1973. If this be a basis for granting certiorari, i.e., a factual conflict between petitioner and the Court below, then all such petitions should be granted because the very essence of an appeal is, in part, a dispute as to the application or non-application of facts in the case. To enunciate this conclusion is to show its erroneousness.

In no sense, then, can these cases be viewed as presenting a question of a magnitude sufficient to warrant the exercise of this Court's jurisdiction to review on writ of certiorari.

CONCLUSION

Upon the foregoing, it is respectfully submitted that the petitions for writs of certiorari should be denied.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-686

No. 73-687

TELEPHONE USERS ASSOCIATION, INC.,
Petitioner,

v.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
and
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY,
Respondents.

On Petitions for Writs of Certiorari to the District of Columbia Court of Appeals

BRIEF FOR RESPONDENT THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY IN OPPOSITION

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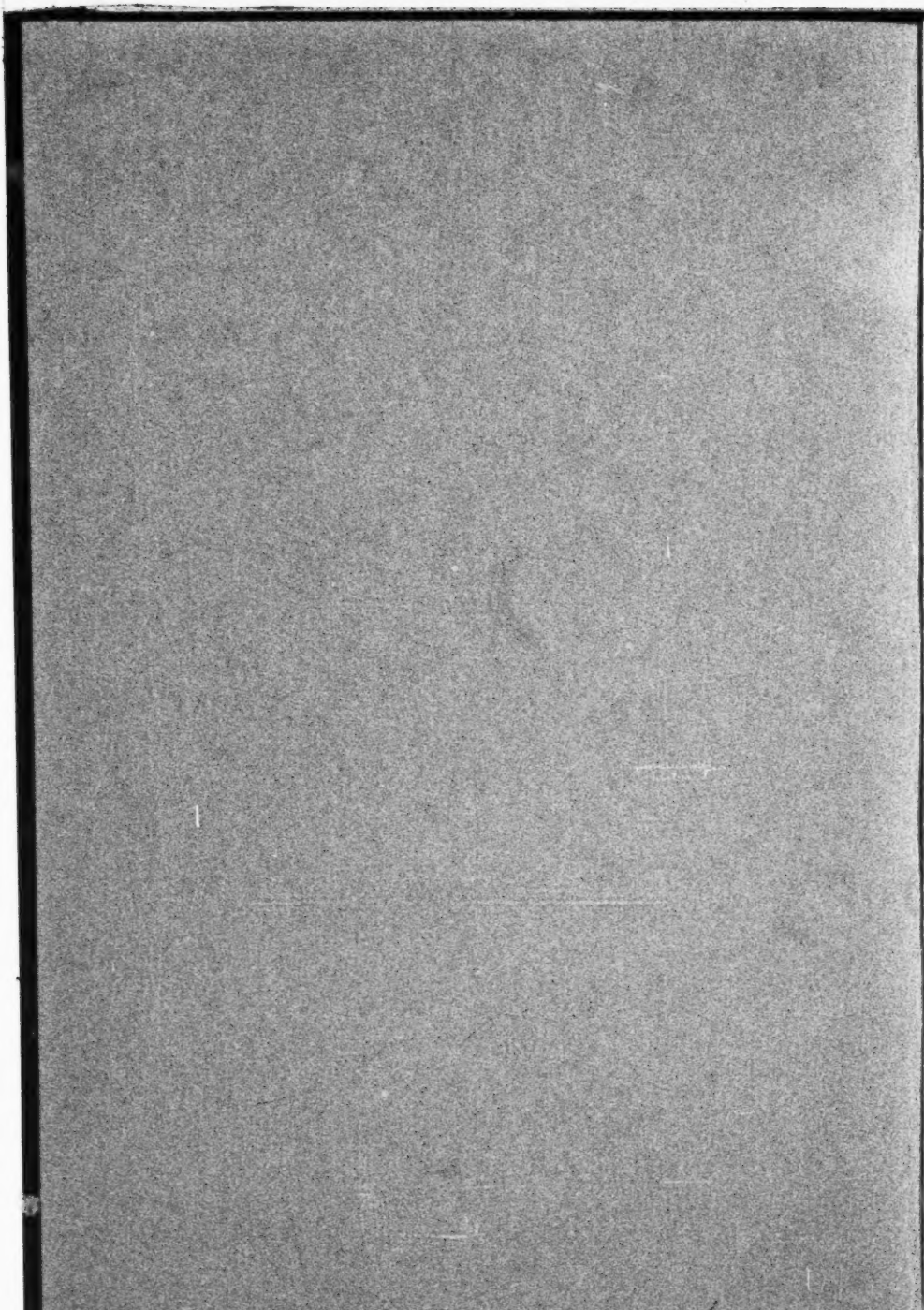

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
QUESTION PRESENTED	2
STATUTE INVOLVED	2
COUNTERSTATEMENT OF THE CASES	3
ARGUMENT	7
I. This Court's Policy of Declining To Review Court Decisions Involving Only the Proper Interpretation of a District of Columbia Statute Should Be Followed in this Case	7
II. The Association's Arguments Supporting Its Petitions for Writs of Certiorari Are Baseless and, Therefore, Do Not Merit this Court's Consideration	8
CONCLUSION	12

TABLE OF AUTHORITIES

CASES:

Bebchick v. Public Utilities Commission, 109 U.S. App. D.C. 298, 287 F.2d 337 (1961)	11
Chesapeake and Potomac Telephone Co., 95 PUR3d 339 (D.C. Pub. Serv. Comm's 1972), reconsideration denied, 96 PUR3d 373 (1972)	3
Chesapeake and Potomac Telephone Co., Case No. 585, Order No. 5549 (D.C. Pub. Serv. Comm'n 1972)	3
Del Vecchio v. Bowers, 296 U.S. 280 (1935)	7
District of Columbia x. Pace, 320 U.S. 698 (1944)	7
General Motors Corp. v. District of Columbia, 380 U.S. 553 (1965)	7, 8
Goodman v. Public Service Commission, 309 A.2d 97 (D.C. Ct. App. 1973)	12

Page

Powell v. Washington Metropolitan Area Transit Commission, 151 U.S. App. D.C. 295, 466 F.2d 466 (1972) 10
Sierra Club v. Morton, 405 U.S. 727 (1972) 7, 9, 10, 11
Telephone Users Association, Inc. v. Public Service Commission, 42 U.S.L.W. 3193 (U.S. Sup. Ct. October 9, 1973) 6
Telephone Users Association, Inc. v. Public Service Commission, 304 A.2d 293 (D.C. Ct. App. 1973) .....*passim*
Telephone Users Association, Inc. v. Public Service Commission, Appeal No. 7126, Order dated April 20, 1973 3
United States v. Public Utilities Commission, 80 U.S. App. D.C. 227, 151 F.2d 609 (1945) 11
United States v. SCRAP, 412 U.S. 669 (1973) 9, 10

STATUTES:

District of Columbia Code, 1973
Title 43, §705 ..... *passim*
Title 43, §301 3

MISCELLANEOUS:

D.C. Court of Appeals Rule 17(g) 5
D.C. Court of Appeals Rule 40 5

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BRIEF FOR RESPONDENT THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY IN OPPOSITION

OPINIONS BELOW

The decision of the District of Columbia Court of Appeals presented in Docket No. 73-686 is reported at 304 A.2d 293 (1973). (Appendix to Petition in No.

73-686). The decision of the District of Columbia Court of Appeals presented in Docket No. 73-687 is unreported. (App. to Petition in No. 73-687).

QUESTION PRESENTED

Should this Court undertake to review decisions of the District of Columbia Court of Appeals which held that an incorporated association, which did not allege that it paid for telephone service or had a "direct stake" in the outcome, was not "affected . . . to a legally cognizable extent" by final decisions of the Respondent Public Service Commission authorizing increased telephone rates and, therefore, failed to satisfy the statutory prerequisite to standing to appeal those decisions. D.C. Code 1973, § 43-705.

STATUTE INVOLVED

District of Columbia Code, 1973 edition, Title 43, Section 705 in pertinent part:[1]

> "The District of Columbia Court of Appeals shall have jurisdiction to hear and determine any appeal from an order or decision of the [Public Service] Commission. Any public utility or any other person or corporation affected by any final order or decision of the Commission . . . may, within sixty days after final action by the Commission upon the petition for reconsideration, file with the clerk of the District of Columbia Court of Appeals a petition of appeal setting forth the reasons for such appeal and the relief sought . . ."

[1] The identical language appears in D.C. Code 1967, § 43-705 (Supp. V 1972) which, at the time of the Association's appeals, was the current edition of the District of Columbia Code as supplemented.

COUNTERSTATEMENT OF THE CASES

The District of Columbia Court of Appeals dismissed for lack of standing petitions of appeal filed by Petitioner Telephone Users Association, Inc. (hereafter "TUA") which sought judicial review of two decisions of the Respondent Public Service Commission of the District of Columbia (hereafter "the D.C. Commission"). *Telephone Users Association, Inc.* v. *Public Service Commission,* 304 A.2d 293 (D.C. Ct. App. 1973); *Telephone Users Association, Inc.* v. *Public Service Commission,* Appeal No. 7126, Order dated April 20, 1973.

The D.C. Commission Record: The D.C. Commission decisions which TUA sought to appeal authorized The Chesapeake and Potomac Telephone Company (hereafter "the Telephone Company") to increase prices for certain telephone services provided within the District of Columbia.[2] In Case No. 570, the D.C. Commission prescribed a restructured rate schedule designed to yield an additional $13.2 million to the Telephone Company.[3] In the second case, Case No. 585, the D.C. Commission authorized a 1% surcharge on billed local telephone charges to permit the Telephone Company to recover a 1% increase in the District of Columbia gross receipts tax which was enacted into law shortly after the D.C. Commission's final decision in Case No. 570.[4]

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[2] The D.C. Commission's authority over the reasonableness and justness of the Telephone Company's rates is derived from the Public Service Law of the District of Columbia enacted by Congress. D.C. Code 1973 § 43-301 *et seq.*

[3] *Chesapeake & Pot. Tel. Co.,* 95 PUR3d 339 (D.C. Pub. Serv. Comm'n 1972), *reconsideration denied,* 96 PUR3d 373 (1972).

[4] *Chesapeake & Pot. Tel. Co.,* Case No. 585, Order No. 5549 (D.C. Pub. Serv. Comm'n 1972).

In Case No. 570, TUA petitioned the D.C. Commission for leave to intervene alleging only that it was a "telephone user" and that it represented "numerous" undisclosed "similarly situated" persons. In Case No. 585, TUA sought to intervene "for the same reasons set forth in Case No. 570 which it adopts here by reference."

In both proceedings, the Telephone Company opposed intervention pointing out, *inter alia,* that TUA did not subscribe to any telephone service; that the service it allegedly "used" was subscribed for, and billed to, Mr. A. S. Curtis; and, that it did not and could not claim standing to intervene on the basis of its "membership".[5] In both cases, the D.C. Commission overruled the Telephone Company's objections and held that ". . . as a telephone user, TUA should be permitted to intervene . . . " (*See,* 304 A.2d at 296).

Although it actively participated in both cases and was encouraged by the D.C. Commission to state its interest in local telephone rates, TUA remained mute concerning what, if any, affect an increase in local telephone rates would have on it and offered no explanation or evidence of its financial stake in the outcome of either case.[6]

TUA eventually appealed the D.C. Commission's final order in each case to the D.C. Court of Appeals

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[5] TUA had previously informed the D.C. Commission that it did not "function" on a membership basis. (*See,* 304 A.2d at 295). In its petition for rehearing in the D.C. Court of Appeals, TUA candidly admitted turning away "thousands" of persons who had applied for membership.

[6] For example, in Case No. 570, TUA flatly refused the D.C. Commission Chairman's request to provide pertinent information about itself (Tr. 421).

pursuant to D.C. Code Section 43-705. The appeal from the first telephone rate order (Case No. 570) was docketed by the D.C. Court of Appeals as Appeal No. 6819. The appeal from the D.C. Commission decision in Case No. 585 was docketed as Appeal No. 7126.

Appeal No. 6819: On October 3, 1972, TUA filed its petition of appeal requesting review of the D.C. Commission's order in Case No. 570. Two months later, TUA filed its opening brief. Neither in its petition nor in its brief did TUA allege any adverse affect on it resulting from the D.C. Commission's order.

In its opposing brief, the Telephone Company contested TUA's standing to appeal the Commission's final order.[7] TUA failed to file a reply brief or otherwise assert that it had a direct economic interest in the order increasing local telephone rates.

By an opinion and order dated April 6, 1973, the District of Columbia Court of Appeals dismissed the petition of appeal because TUA "failed to show it will be 'affected by' the Commission's order to a legally cognizable extent." (304 A.2d at 296).

On April 25, 1973, in a *per curiam* order, the D.C. Court of Appeals denied TUA's petition for rehearing and various accompanying motions.[8]

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[7] The Telephone Company had been permitted to intervene as a respondent in TUA's appeal. *See*, D.C. Court of Appeals Rule 17(g).

[8] Three days after the Court of Appeals' dismissal, TUA applied for telephone service in its own name and, thereafter, filed a barrage of petitions and motions which, in essence, urged the Court of Appeals to consider TUA's changed circumstances. Rule 40 of the D.C. Court of Appeals, which governs petitions for rehearing, requires the petitioner to state facts overlooked or misapprehended by the Court and does not allow the petitioner, as TUA did, to change the operative facts of the Court's decision and seek a rehearing on the basis of the new situation.

Appeal No. 7126: In its petition of appeal from the D.C. Commission's order in Case No. 585, TUA again failed to allege or show any adverse affect flowing from the final order.

The Telephone Company, which intervened as a respondent in Appeal No. 7126, filed a motion to dismiss for lack of standing. TUA again did not respond with even a single allegation of fact showing that it was adversely affected by the D.C. Commission's final order.

On April 20, 1973, the Court, after considering the record, granted the Telephone Company's motion and dismissed TUA's petition of appeal for lack of standing.[9]

Supreme Court Docket Nos. 73-686 and 73-687: On July 5, 1973, TUA petitioned this Court to review the D.C. Court of Appeals' decisions in both cases by filing separate motions to proceed *in forma pauperis* and separate petitions for writs of certiorari. Both motions were denied (42 U.S.L.W. 3193) and, on October 24, 1973, TUA paid the required fees and filed motions to waive printing.

[9] Two weeks elapsed between the D.C. Court of Appeals' dismissal of TUA's petition of appeal in No. 6819 and the dismissal in No. 7126. During that interval, TUA did not attempt to amend its petition of appeal in No. 7126 or respond to the Telephone Company's motion to dismiss for lack of standing.

ARGUMENT

TUA's petitions for writs of certiorari should be denied. No constitutional or substantial federal question is presented. No overriding question of public importance is involved. TUA seeks nothing more than this Court's review of the D.C. Court of Appeals' interpretation of a local statute under unique factual circumstances which, according to TUA, no longer exist.

I. This Court's Policy of Declining to Review Court Decisions Involving Only the Proper Interpretation of a District of Columbia Statute Should Be Followed in this Case.

This Court has stated time and again that, absent compelling constitutional questions, it does not sit to review judicial decisions construing statutes whose operation is limited to the District of Columbia. *See, e.g., Del Vecchio* v. *Bowers,* 296 U.S. 280, 285 (1935); *District of Columbia* v. *Pace,* 320 U.S. 698, 702 (1944); *General Motors Corp.* v. *District of Columbia,* 380 U.S. 553, 556 (1965). Yet, this is precisely what TUA requests this Court to do in both its petitions.

Section 43-705 of the D.C. Code limits the right to appeal a final order of the D.C. Commission to a "person or corporation affected by" that order. Interpreting that provision, the D.C. Court of Appeals denied TUA, a corporation which did not allege that it paid for telephone service, standing to appeal the D.C. Commission's rate orders prescribing increased local telephone rates.[10] The D.C. Court of Appeals' construc-

[10] With no claim before it that TUA sought to represent its "members", the D.C. Court of Appeals had no occasion to address itself to whether, under D.C. Code § 43-705, an organization possesses standing to appeal a D.C. Commission order on behalf of its members who are adversely affected. *Cf., Sierra Club* v. *Morton,* 405 U.S. 727, 739 (1972).

tion of § 43-705 not only has no impact beyond "the Potomac's shores",[11] it has extremely limited, if any, future impact within the District of Columbia. In fact, TUA itself suggests that the certiorari petitions are "moot" because factual circumstances material to the D.C. Court of Appeals' decision have changed due to TUA's own subsequent actions. (TUA's Petition in No. 73-686, p. 9).

II. The Association's Arguments Supporting Its Petitions for Writs of Certiorari Are Baseless and, Therefore, Do Not Merit This Court's Consideration.

TUA urges this Court to grant its petitions for writs of certiorari for three reasons: (1) the D.C. Court of Appeals "based its whole opinion on a misreading of the administrative file"; (2) to rectify a "conflict with the opinion[s] of this Court and . . . the other appellate tribunal in the District of Columbia, namely the United States Court of Appeals for the District of Columbia Circuit"; and (3) in Docket No. 73-687 because the D.C. Court of Appeals gave no basis for its conclusion.

Of the three arguments advanced by TUA, only the alleged "conflict" in decisions merits any discussion and, then, simply because the cases relied on by TUA emphasize the correctness of the D.C. Court of Appeals' decisions. The other two arguments are frivolous.[12]

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[11] *General Motors Corp.* v. *District of Columbia, supra,* 380 U.S. at 556.

[12] The sole basis for TUA's assertion that the D.C. Court of Appeals misread the "administrative file" is that the Court did not consider the language of a D.C. Commission order issued almost three months after the Court's decision and more than two months after the Court denied TUA's petition for rehearing.

The Supreme Court decision relied on by TUA to support its "conflict" argument is *Sierra Club* v. *Morton,* 405 U.S. 727 (1972). In that decision, the Court held that "to obtain standing the party seeking review *must allege facts* showing that he is himself adversely affected . . ." by the decision below. (Emphasis supplied). (405 U.S. at 740). This test requires "more than an injury to a cognizable interest". It "requires that the party seeking review himself be among the injured." (405 U.S. at 734-35). Reiterating the *Sierra Club* standards, this Court in *United States* v. *SCRAP,* 412 U.S. 669 (1973) again emphasized that a party seeking review must himself be among the injured and have a direct stake in the controversy. (412 U.S. at 687).

By way of contrast, TUA, despite repeated challenges to its standing, never alleged a single fact either before the Commission or in its petition of appeal or brief showing that it was "injured" or otherwise possessed a "direct stake" in the outcome.

If TUA had an interest in the level of telephone rates, it was at most an "organizational interest": it was not a customer of the Telephone Company and did not allege that it paid for telephone service. As this Court made clear in both the *Sierra Club* and *SCRAP*

TUA incorrectly asserts that the Court of Appeals gave "no basis" for dismissing the petition of appeal in No. 7126. The fact is that the Court did state its "basis," namely, TUA lacked standing to appeal the D.C. Commission's order. In view of the fact that the D.C. Court of Appeals dismissed TUA's appeal in No. 6819 less than a month earlier and the fact that no additional allegations bearing on the standing issue were advanced by TUA in No. 7126, the Court obviously found it unnecessary to spell out again in detail its reasons for dismissing TUA's appeal from the final order in Case No. 585.

cases, an organizational interest, without more, is an insufficient basis to obtain standing. *Sierra Club* v. *Morton, supra,* 405 U.S. at 739; *United States* v. *SCRAP, supra,* 412 U.S. at 685-87.

Equally lacking in merit is the alleged "conflict" between the D.C. Court of Appeals and the United States Court of Appeals for the District of Columbia Circuit (hereafter "Circuit Court of Appeals"). No such conflict exists as evidenced by the Circuit Court of Appeals' recent decision in *Powell* v. *Washington Metropolitan Area Transit Comm'n,* 151 U.S. App. D.C. 295, 466 F.2d 466 (1972), a decision not cited by TUA. In the *Powell* case, the Circuit Court of Appeals, relying on *Sierra Club* v. *Morton,* held that while a customer of regulated utility services "may" be aggrieved by a commission fare order:

> "[a]n essential ingredient of the aggrievement standard is adversity flowing from the order sought to be reviewed." (151 U.S. App. D.C. at 297; 466 F.2d at 468).

Applying the *Powell* standard, TUA, which was not a customer of the Telephone Company and had never alleged that it paid for telephone service, failed to show the "essential ingredient of . . . adversity flowing from" the D.C. Commission's final orders necessary to possess standing to appeal those orders. In short, the *Powell* decision demonstrates that no "conflict" exists between the D.C. Court of Appeals and the Circuit Court of Appeals.[13]

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[13] The factual basis for the alleged "conflict" is predicated on TUA's post-decision assertion that it "paid" for coin telephone service. TUA attempts to parlay that assertion, made for the first time in its petition for rehearing, into an argument that the D.C.

As a concluding argument, TUA struggles to convey the impression that the D.C. Court of Appeals has closed the courtroom door on paying customers of utilities seeking to appeal D.C. Commission prescribed rate increases. Such is not the case. The Court of Appeals left no doubt that one who "uses *and pays for* telephone service would be affected by any order increasing telephone rates" and, accordingly, possesses the requisite interest under D.C. Code § 43-705 to

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Court of Appeals' decision "conflicts" with decisions of the Circuit Court of Appeals granting standing to transit riders who "put coins" in the transit company's fare boxes. As TUA tacitly admits, the Circuit Court of Appeals' decisions it cites either explicitly or implicitly recognize that the parties who brought the appeals were *paying* customers of the transit company or utility. *See e.g., Bebchick* v. *Public Util. Comm'n*, 109 U.S. App. D.C. 298, 299, 287 F.2d 337, 338 (1961) [in deciding the standing issue, the Circuit Court of Appeals had before it the appellant-transit riders' uncontested sworn affidavits alleging facts showing that each was personally affected by the Commission's order authorizing a transit fare increase] and *United States* v. *Public Utilities Comm'n*, 80 U.S. App. D.C. 227, 151 F.2d 609 (1945) [the standing issue was whether the federal government, as a "customer" of the local electric company, could appeal a decision of one of its own agencies (the D.C. Commission)].

TUA, moreover, overlooks the Circuit Court of Appeals' express holding in *Powell* that even a paying customer's standing is predicated on demonstrating an adverse affect flowing from the Commission's rate order. The *Powell* decision involved an appeal from a WMATC order denying a fare increase. Before the WMATC, transit-rider Powell had not argued that the existing fares should have been lowered. Accordingly, the Circuit Court of Appeals found that Powell had not been "aggrieved" (the statutory standard prescribed to obtain standing to review WMATC orders).

The plain fact is that even if TUA had alleged from the very outset that it paid for coin telephone service it could not have shown any adverse affect upon which to obtain standing to appeal either D.C. Commission rate order. The ten-cent rate for coin telephone service was not changed by the Commission in either decision presented for review and TUA at no time claimed that the existing coin telephone should have been reduced.

appeal a final Commission order. (304 A.2d at 296). *See also, Goodman* v. *Public Service Commission,* 309 A.2d 97 (D.C. Ct. App. 1973) where the D.C. Court of Appeals determined that a residential customer had a right to appeal an order authorizing an increase in electric rates.

In TUA's appeals, despite repeated challenges to its standing, TUA did not allege that it paid for any telephone service affected by the D.C. Commission's final order or otherwise had a "direct stake" in the outcome of those orders. This Court is asked to disregard that simple fact.

CONCLUSION

For the reasons stated above, the petitions for writs of certiorari in Docket No. 73-686 and in Docket No. 73-687 should be denied.

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